IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 58 OF 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

STATE OF GUJARAT - Appellant(s)
Versus
NANDASAN GRAM PANCHAYAT & ANR. - Respondent(s)

==========

Appearance :
SHRI A.Y. KOGJE, ASST. GOVERNMENT PLEADER for Appellant(s).
NONE for Respondent(s) : 1.
SHRI SANJAY M. AMIN for Respondent(s) : 2.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/12/2006

ORAL JUDGMENT

1. The appellant, being aggrieved by the judgement and decree dated 20th August, 1986 passed in Regular Civil Appeal No.97 of 1985 passed by the learned Extra Assistant Judge, Mehsana, reversing the judgement and

decree dated 26th February, 1985 passed in Regular Civil Suit No.297 of 1979 by the learned Civil Judge (S.D.), Mehsana, whereunder the learned Civil Judge had dismissed the suit, is before this Court.

2. The appeal was admitted for hearing the parties on the following substantial questions of law:

> *"Whether in the facts and circumstances of the case, the lower appellate Court erred in holding that the re-constitution of Gram Panchayat of Nandasan was not in conformity with the provisions of Section 9(2) of the Gujarat Panchayat Act and Section 7(a) of the Bombay Land Revenue Code?"*

3. The short facts necessary for disposal of the appeal are that respondent No.1 - Nandasan Gram Panchayat filed a Regular Civil Suit challenging the notification issued by the State Government under Section 9(2) of the Gujarat Panchayats Act, 1961 ("the Act" for short) whereunder certain properties belonging the plaintiff-Panchayat were carved out and were allotted in favour of the newly constituted Gram Panchayat, namely, Laxmipura. The said order was to be implemented with effect from 1st October, 1979. The order was published in Gujarat Government Gazette, Part-IV (B) dated 15th November, 1979. The plaintiff submitted that in accordance with Section

9(2) of the Act, the State Government was required to consult the plaintiff, the District Panchayat and only after such consultation, the State could issue such notification. It is the case of the plaintiff that in absence of such consultation, no notification could be issued.

3.1 The State and the newly constituted Panchayat, Laxmipura, appeared in the Court and contested the suit on various grounds. The trial Court, agreeing with the defence raised by the defendants, dismissed the suit, but, the learned Appellate Court, after taking into consideration the provisions contained in Section 9(2) of the Act, observed that in absence of an effective consultation with the plaintiff-Panchayat and the District/Taluka Panchayat, such a notification, creating yet another Panchayat, could not be issued.

4. The learned Counsel for the appellant-State submits that Section 9(2) of the Act, which is held to be mandatory by the learned Appellate Court in view of a single Bench's judgement of this Court in the matter of ***Bhalod Gram Panchayat vs. State of Gujarat,*** [***1986 G.L.H. 53***], was taken up for consideration by a Division Bench of this Court in the matter of ***Kalubhai Kesrisingh Mahida***

vs. State of Gujarat, [***1965 G.L.R. 451***]. He submits that the provisions contained in sub-section (2) of Section 9 of the Act, according to the Division Bench of this Court, are not mandatory and if such provisions are not observed, the Act of the State would not become void, nor can be nullified by any authority or the Court.

5. In the matter of ***Kalubhai Kesrisingh Mahida*** (*supra*), the Division Bench has observed as under:

> *"Since sec.9(2) provides for the reconstitution of a village, it also provides that the sense of the Panchayat should be taken before its limits are altered. The section however does not prescribe what consequences would follow if prior consultation is not made before taking an action under the section. Considering the consequences that are likely to follow on the taking of an action under the section and the effect of non-compliance with that part of the section which provides for a prior consultation, and considering the subject matter of the provision and its relation to the general object thereby intended to be secured and upon a review of the matter according to the principles of construction, it appears the provision is directory and although it does indicate a duty to consult the panchayat before passing an order under the section, it does not follow that every departure from that duty will taint the whole proceeding with a fatal blemish*

and render it void and ineffective."

In view of the said authoritative pronouncement of this Court, the learned trial Court could not hold that the provision of Section 9(2) of the 1961 Act were to be mandatorily observed and non-observance of the said provision would make the impugned notification bad.

6. The appeal deserves to and is, accordingly, allowed. No costs. A decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**